

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLAYTON EVAN CUMMINGS,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

CASE NO. 2:23-cv-1314-JNW-GJL

ORDER GRANTING MOTION TO
STAY THE CASE

The District Court has referred this action to United States Magistrate Judge Grady J. Leupold. Petitioner Clayton Evan Cummings filed a federal habeas Petition pursuant to 28 U.S.C. § 2254, seeking relief from a state court conviction. Dkt. 6. Currently before the Court is Petitioner's Motion to Stay these proceedings. Dkt. 9.

On September 13, 2023, the Court entered an Order directing service of the habeas Petition, but also directing Respondent to respond only to Petitioner's Motion to Stay. Dkt. 10. Respondent filed a Response on September 20, 2023, indicating Respondent does not oppose a stay for the limited purpose of allowing Petitioner to attempt to exhaust his state court remedies. Dkt. 12.

District courts may use a “stay-and-abeyance” procedure while a petitioner exhausts his claims in state court. *Rhines v. Weber*, 544 U.S. 269, 275–77 (2005); *Calderon v. United States District Court (Taylor)*, 134 F.3d 981, 988 (9th Cir. 1998). Here, where Petitioner’s relevant judgment and sentence remain pending in the state courts, the Court finds it would be a proper exercise of discretion for the Court to stay the federal proceedings so that Petitioner may attempt to exhaust his federal habeas claims in state court. Thus, after review of the relevant record, the Court finds a stay is appropriate and **GRANTS** Petitioner’s Motion to Stay. Dkt. 9. The case is **STAYED**. Further, as the case is stayed so that Petitioner may attempt to exhaust his claims in state court, the Court **DENIES without prejudice and as premature** Petitioner’s Motion for Habeas Corpus Relief. Dkt. 8.

Petitioner is directed to file a report every ninety (90) days informing the Court of the status of Petitioner’s state court proceedings. The first status report is due on or before **December 29, 2023**, and shall include the state court cause number(s). If the state court dismisses or resolves Petitioner’s state court proceedings, Petitioner is directed to inform the Court and file a motion to lift the stay within 30 days of the state court taking action. Respondent’s answer shall be filed 45 days after the stay is lifted.

Dated this 26th day of September, 2023.

A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid black horizontal line.

Grady J. Leupold
United States Magistrate Judge